Supreme Court, U.S.
FILED
JAN 3 1983
ALEXANDER L. STEVAS
CLERK

82-1119

No. _____

In The

Supreme Court of the United States

October Term, 1983

SUSIE L. WILLIS

Petitioner

VS.

Clyde Muse, President of Hinds Junior College, T.H. Kendall III, Sharp W. Banks, Jr., William M. Moss, Walter R. Bivins, Donald S. Oakes, E.A. Porter Joseph T. Travillion, Jr., Michael B. Vinson, Ellis W. Wright, Jr. and George E. Wynne, Members of the Board of Trustees of Hinds Junior College,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

EDWARD BLACKMON, JR.
232 West Peace Street
Post Office Drawer 568
Canton, Mississippi 39046
(601) 859-6500 or 355-0423
Attorney for Petitioner

of Counsel:
BLACKMON & SMITH

QUESTIONS PRESENTED

(1) Whether Petitioner Had Property Or Liberty Interest In Her Employment Which Would Entitle Her To Procedural Due Process Protection Under the Fifth and Fourteenth Amendments To The United States Constitution.

(2) Whether Respondents' Requirement That Petitioner Submit To Their "Individual Plan Of Improvement" As A Prerequisite To Continued Employment Violated Petitioner's Rights Secured By The First Amendment To The United States Constitution.

PARTIES TO THIS PROCEEDING IN THE COURT OF APPEALS

Plaintiff-Petitioner

Susie L. Willis

Defendants-Respondents

Clyde Muse
T.H. Kendall III
Sharp W. Banks, Jr.
William M. Moss
Walter R. Bivins
Donald S. Oakes
E.A. Porter
Joseph T. Travillion, Jr.
Michael B. Vinson
Ellis W. Wright, Jr.
George E. Wynne

TABLE OF CONTENTS

PAGE

Questions Presented i

Parties to This Proceeding in the Court of Appeals ii

Table of Authorities iv

Prior Opinion 2

Jurisdiction 2

Statutes Involed 2

Statement of the Case 2

Reason for Granting the Writ 13

Conclusion 17

Appendices

Appendix A (Judgment, United States District Judge) A-1

Appendix B (Opinion of Court of Appeals) B-1

Appendix C (Conflicting Opinion) C-1

Appendix D (Statutory Materials) D-1

TABLE OF AUTHORITIES

CASES **PAGE**

Board of Regents v. Roth, 310 F. Supp. 972, 446, F.2d 806, 408, U.S. 564 ..... 12,13,A-7,B-3,B-4,C-1

Chase v. Fall Mountain Regional School District, 330 F. Supp. 388 12,13

Birnbaum v. Trussell, 371 F.2d 672 13

Meredith v. Allen County War Memorial Hospital Comm'n, 397 F.2d 33 13

Perry v. Sindermann, 408 U.S. 593 (1972) A-7,B-3,B-4,B-5,C-1

Armstrong v. Mango, 380 U.S. 545, (1965) 14

Mullane v. Central Hanover Trust Co., 339 U.S. 306, (1949) 14

Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir.) Cert. denied, 396 U.S. 930 (1961) 15

Keyishian v. Board of Regents, 385 U.S. 589 (1967) 16

Mailloux v. Kiley, 323 F. Supp. 1387 16,17

Trister v. University of Mississippi, 420 F.2d 499 (1969) 15

Johnson v. Branch, 364 F.2d 177, Cert denied, 385 U.S. 1003 (1967) 16

Jeffries v. Turkey Run Consolidated School District, (7 CA) 492 F.2d 1 ..... A-7

Burh v. Buffalo Pub. School District, (8 CA) 509 F.2d 1196 ..... A-7

Bishop v. Wood, 426 U.S. 341, 96 S. Ct. 2074 ..... A-9,B-3

White v. Mississippi State Oil and Gas Bd.,
650 F.2d 540, 541 (5th Cir. 1982) *(citing*
McElwee v. Todd, 581 F.2d 1182 [5th Cir. 1978]) B-3

Paul v. Davis, 424 U.S. 693, 711-12 (1976) B-4

Daly v. Sprague, 675 F.2d (5th Cir. 1982) B-4,B-5

Moore v. Otero, 557 F.2d 435 (5th Cir. 1977)..... B-4

Cantrell v. Vickers, 495 F. Supp. 195 (N.D. Miss. 1980).. B-4

Duke v. North Texas State University
338 F. Supp. 990 (E.D. Tex. 1971) B-4

Christianburg Garment Co. v. EEOC,
434 U.S. 412 (1978) B-6

STATUTES

28 U.S.C. Section 1259(1) 2

42 U.S.C. Section 1983 and 1985.....2,6

Mississippi Code Section 37-29-63, 1972 Annotated 2,B-4

Mississippi Code Section 37-9-101 to 37-9-113
(1979) Annotated B-4

CONSTITUTIONAL PROVISIONS

First Amendment 2,6,16,A-1,A-6,A-8

Fifth Amendment 2,6,A-1

Fourteenth Amendment 2,6,13,14,15,16,A-1,A-6,A-9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. _____

SUSIE L. WILLIS,

Petitioner,

VS

Clyde Muse, President of Hinds Junior College, T.H. Kendall III, Sharp W. Banks, Jr. William M. Moss, Walter R. Bivins, Donald S. Oakes, E.A. Porter, Joseph T.Travillion, Jr. Michael B. Vinson, Ellis W. Wright, Jr., and George E. Wynne, Members of the Board of Trustees of Hinds Junior College District,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit in the above entitled cause on October 4, 1982.

PRIOR OPINION

The unreported opinion of the United States District Court Judge, Honorable Harold Cox, denying Petitioner's Bill of Complaint for a permanent injunction to require Respondents to offer Petitioner a non-probationary contract for the school years 1980-81 and 1981-82 appears in Appendix C, *infra*. The unreported opinion of the Fifth Circuit Court of Appeals appears herein in Appendix D, *infra*.

JURISDICTION

The judgment of the Fifth Circuit Court of Appeals was entered on October 4, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1259(1).

STATUTES INVOLVED

The federal statutes involved are 42 U.S.C. Section 1983 and 1985, as are the First, fifth and Fourteenth Amendments to the United States Constitution.

Mississippi Code Sections 37-29-63, 1972 Annotated. Pertinent statutory provisions are set forth in Appendix A.

STATEMENT OF THE CASE

This is a lawsuit by a Black Socology instructor at Respondent Hinds Junior College whose contract for employment was not renewed for the 1981-82 school year, and whose contract for the 1980-81 school year required her to submit to the terms of an "Individual Plan of Improvement."[1]

---

[1] May 12, 1980 ATTACHMENT B

This conference is to establish specific goals that Mrs. Susie Willis must achieve in order to be removed from probationary employment status or for consideration of renewal of contract at Hinds Junior College.

/continued ...

Footnote [1] continued/ ...

Your probationary status for 1980-81, offered in the letter of May 2, 1980, from Dr. Clyde Muse, President, is the result of your overall performance for the past 4 years. More specifically the following 2 main points necessitate action by administration:

1. Col. Frank Walsh, Mrs. Anne Hardy, Dr. Mike Rabalais, and Dr. Clyde Muse have all had telephone calls complaining about your performance as an instructor.
2. The letter of December 11th addressed to the Board of Directors of Hinds Junior College and signed by 16 students cannot be ignored.

You must show improvement in the major areas listed below before you will be recommended for removal from your probationary status or for consideration of renewal of contract. Your performance improvement will be discussed with you on October 20, 1980, December 15, 1980, and March 16, 1981.

NEEDS IMPROVEMENT	ACTION	RESOURCES	EVALUATION
Student-instructor relationship	A. Allow students freedom of expression in the classroom B. Refrain from humiliating students when they disagree with your opinions C. Be open to questioning from students	Take a Teacher Effectiveness Training course	Absence of complaints to Department Chairman, Division Chairman, Academic Dean, Vice President for Instructional and Community Affairs, and President - Feedback will be given at Oct. 20, 1980, December 15, 1980, and March 16, 1981 conferences

/continued ...

Footnote [1] continued/ ...

Treat students as adults	A. Do not "Talk down to students" - for example, "reading text after they have been assigned to read it" and spelling common words such as "of" and "for" to them B. Refrain from having students reciting definitions in group rounds C. Avoid reprimanding students in presence of others	Cohen, Arthur & Florence Brawer. *Confronting Identity: The Community College Instructor*	Absence of student complaints to administrative personnel
Course time management as stated in point #4 of letter of December 11, 1979, addressed to Board of Directors and signed by 16 students - "Three class periods were spent on one chapter, but no expansion of material or continuation of a chapter from	A. More evenly spaced coverage of course material	Prepare a schedule for covering material	Conference with Department and Division Chairman week of October 6, 1980

/continued ...

[This Page Intentionally Left Blank]

week to week — the whole chapter was covered one week, then the same coverage verbatum [sic] the next week, and (one can only presume that from lack of memory) the very same coverage the next week, starting at the beginning of the chapter again. Up to the three class periods before final examination, we covered seven chapters of a 23-chapter book and in those final three class periods before final exam, the remaining 16 chapters were dumped on the class."			
Scores on the student evaluation of instruction form	A. Follow the above recommendations	Yourself	Fall 1980 student evaluation of instruction; interpretation at December 15, 1980 conference with Department Chairman, Division Chairman, and Academic Dean.

continued/ ...

Petitioner brought this suit against respondents, President of Hinds Junior College and its Board of Trustees, in the United States Court for the Southern District of Mississippi, pursuant to the First, Fifth and Fourteenth Amendments to the United States Constitution and under 42 U.S.C. Section 1983 and 1985.

Petitioner alleged in her suit that Respondents did not afford her due process in the administrative hearings held before its hearing officers and the Board of Trustees, and that the Proposed "Individual Plan of Improvement" infringed upon her rights secured by the First Amendment to the United States Constitution.

At the trial, it was shown that a December 11, 1979 letter[2] from fifteen (15) students in Petitioner's sociology class to the re-

---

Footnote [1] continued/ ...

I have read and understand the terms of my probationary status.

Susie L. Willis

We have participated in this conference on May 12, 1980

Signed by Frank Walsh

Frank Walsh

Signed by Anne Hardy

Anne Hardy

Signed by Mike Rabalais

Mike Rabalais

---

[2]

December 11, 1979

Board of Directors
Hinds Junior College
Raymond, Mississippi

Deposition
Exhibit No.
P-1
Dr. Muse

continued/ ...

Footnote [2] continued/ ...

Dear Members of the Board:

We the undersigned are submitting this letter based on a concern for the standards of education and the method in which this particular course is being instructed.

As students in the course, Sociology 2113, under the instruction of Ms. Willis, we have been subjected to the following:

1. A form of instruction aimed at a classroom equivelant to no higher than a lower elementary level.

   a. Reciting definitions in group rounds.

   b. Having the teacher actually spell out words like "for" and "of" as we're taking notes.

   c. Having the teacher read to us from the text after we had already been assigned to read that text on our own, rather than using class time to expand on text material.

2. A discouraging of freedom of expression and questioning by Ms. Willis' manner in responding to questions. If Ms. Willis feels the question or thought expressed disagrees with or challenges what she has said, or if the question cannot be answered directly from the book, or if Ms. Willis does not understand the questions, she becomes defensive and simply ends the matter with statements such as:

   a. It is so because I say it is so, and I have been teaching sociology (or history, or English) a long time.

   b. Do you think you know more than I do?

We feel this is bringing the class to a subjective level and is not conducive to open discussion, questioning, and expansion of thought processes.

3. An atmosphere of intense bias and negativism. It appears that Ms. Willis allows her personal feelings to permeate the material presented, with a particular negative emphasis placed on the masculine gender and a propensity for using the United States as a poor example of whatever social problem is being presented. For expediency's sake, examples of these traits are not expounded upon, but can be furnished if necessary.

continued/ ...

Footnote [2] continued/ ...

However, it should be stated that our teacher evaluation was prefaced with the statement that "Hinds could spend it's money much more wisely than on teacher evaluations, which are nothing more than a tool that came into being with integration." The student appointed by Ms. Willis to "assist" with the evaluations had full access to the written evaluations and would not allow us to put our own evaluations into the envelope. She placed her hand on the envelope and said we "could either give the evaluation to her or Ms. Willis," but absolutely would not relinquish the envelope (nor remove her hand from it) to enable the students to place their evaluations privately within the envelope.

4. Poor time management. Three class periods were spent on one chapter, but not an expansion of material or continuation of a chapter from week to week — the whole chapter was covered one week, then the same coverage verbatum [sic] the next week, and (one can only presume that from lack of memory) the very same coverage the next week, starting at the beginning of the chapter again. Up to three class periods before final examination, we covered seven chapters of a 23-chapter book and in those final three class periods before final exam, the remaining 16 chapters were dumped on the class.

The students in this class are from varied backgrounds, of differing age groups, and both sexes; but we are adults who work hard for our money and hope to get the most for our dollar spent, who expect to be treated with the same respect as any other adult (whether student or not), and who are going to school at night out of a true desire to learn and to move ahead in life. Our sincere desire in advising the board of this situation is to, perhaps, remedy a situation for any future students in this class.

Sincerely,

spondent Board of Trustees, prompted Respondents to place Petitioner on probation and require her to submit to an "Individual Plan of Improvement" for the 1980-81 school year. (R. 228, 371, 185, P.3)

Prior to Respondent's decision to place Petitioner on probation and require her to submit to the "Individual Plan of Improvement," Respondents did not advise Petitioner of the existence of the December 11, 1979 letter, nor did they consult with Petitioner about any of the allegations contained in the letter. (R. 20, 22, 127, 180, 181, 225, 226, 271)

Evidence further revealed that only two other letters of complaint had been received by Respondent during Petitioner's tenure, one of which came from a student's parent, who complained that her child was depressed after attending Petitioner's class, and the other was from a student who complained about the subject of race being taught in the chapters being covered by Petitioner's sociology class. Both of these letters were received in 1976. Petitioner was advised of the existence of these two letters and consulted with her supervisors about them (R. 308)

Petitioner was not advised of any other written complaint against her prior to Respondents' decision to place Petitioner on probation and require her to submit to the "Individual Plan of Improvement." (R. 185)

During the five years in which Petitioner was employed by Respondents her class was observed only one time by her supervisor, that observation taking place during the 1976-77 school year. (R. 165, 166) Petitioner's supervisor's report of this observation was complimentary of Petitioner's teaching methods. (R. 165, 166, P.11)

Proof at trial also revealed that Respondent and President of Hinds Junior College, Dr. Clyde Muse, is of the opinion that an instructor who has had complaints lodged against him by students should be advised of the complaints and given an opportunity to respond. (R. 128)

The "Individual Plan of Improvement's" contents were based entirely on the complaints from students contained in their December 11, 1979 letter to the Board of Trustees. (P. 2,3) Respondent Dr. Clyde Muse approved the Plan after it had been completed and prior to Petitioner being advised of its existence.

Petitioner was not advised of the December 11, 1979 letter of complaints and its contents until a May 12, 1980 meeting between she and her supervisors, at which time she also for the first time was advised of the "Individual Plan of Improvement." (R. 20,22)

At the May 12, 1980 meeting with her supervisors, Petitioner refused to sign and agree to the terms and conditions of the "Individual Plan of Improvement" on the basis that she felt that to do so would be an admission to the truth of the allegations contained in the December 11, 1979 letter of complaint, since the letter and "Individual Plan of Improvement" parrot each other. (R. 258, 323)

Subsequent to the May 12, 1980 hearing Petitioner appealed the decision to place her on probation. Petitioner was granted a hearing on June 12, 1980. (R. 312)

At the June 12, 1980 hearing, Respondents offered as an example of the kinds of complaints they were receiving from students about Petitioner, a letter from a student named Jay Ferris, who alleged that he was going to get a "B" from Petitioner's class, when he deserved an "A." (R. 33, 290, P.6)

Prior to presenting the letter from Jay Ferris as evidence against Petitioner, Respondents made no effort to consult with Petitioner about the nature of the complaint, nor did they examine their records to determine if the student had in fact received a "B" instead of an "A." (R. 290, 291) Respondent's records showed that the student had received an "A" at the time the letter was offered as evidence against Petitioner. (R. 245, P.14)

Petitioner's immediate supervisor, Col. Frank K. Walsh, believed the student's allegations against Petitioner were true and did not feel the need to advise Petitioner of the complaint or ask her to respond to it. (R. 285)

Dr. Rabalais also presented a letter of complaint he stated that he had received from a student named Tim Gilmore. (R. 284, P.4) Gilmore complained that Petitioner had improperly deducted fifty (50) points from his paper. (R. 284) Dr. Rabalais made no effort to contact or consult with Petitioner concerning the truth of the allegations contained in the letter prior to presenting it as evidence against Petitioner. (R. 284) The record showed that Gilmore received the grade he deserved, a "79" (R. 287), and that Petitioner had not deducted fifty (50) points from his grade. (P. 5)

Respondent, Dr. Clyde Muse, the person who ordered that Petitioner be placed on probation and be required to submit to the "Individual Plan of Improvement," denied Petitioner's appeal and her stated grounds for the same, that she had not been given an opportunity to present her side prior to the decision to offer her a probationary contract, and to require her to submit to the "Individual Plan of Improvement." (R. 131)

The Respondent Board of Trustees denied by letter dated August 8, 1980, Petitioner's appeal to them, but modified the terms of the "Individual Plan of Improvement" to provide that Petitioner's success under the Plan would depend on the absence of a reasonable number of complaints (P. 9)

The Respondents, at the close of the 1980-81 school year did not renew Petitioner's contract for the 1981-82 school year because she refused to abide by the terms of the "Individual Plan of Improvement."

REASONS FOR GRANTING THE WRIT

(1) The Court below in its opinion denying the relief prayed for by Petitioner limited to areas of a showing of a protected property interest in continued employment to provisions in state statutes, local ordinances or express or implied contracts.

These limitations ignore the fact that there can be other areas which can trigger constitutional protections for a protect property interest.

The proposition that no such limitation should be endorsed by the Courts was recognized by the District Court in *Board of Regents v. Roth,* 310 F. Supp. 972, 446 F 2d 806, 408, U.S. 564, wherein the Court stated that:

> "... to expose him (an untenured professor) to non-retention because the deciding authority is utterly mistaken about a specific point of fact, such as whether a particular event occurred, is unjust. To expose him to non-retention on a basis wholly without reason, whether subtle or otherwise, is unjust. There can be no question that, in terms of money and standing and opportunity to contribute to the educational process, the consequences to him probably will be serious and prolonged and possibly will be severe and permanent. 'Badge of infamy' is too strong a term, but it is realistic to conclude that non-retention by one university or college creates concrete and practical difficulty for a professor in his subsequent academic career."

Likewise, the District Court in *Chase v. Fall Mountain Regional School District,* 330 F. Supp. 388, when faced with facts which revealed that an instructor's contract of employment had not been renewed on the basis of uninvestigated complaints and unverified rumors that he had made sexual advances towards female students, held that such a nonrenewal violated the teacher's right to due process, and further stated that:

> "... To dismiss a teacher on the basis of univestigated complaints and unverified rumors and to admit that the decision does not depend on the truth or falseness of the complaints and rumors is potently unjust, arbitrary, and capricious. If the possibility, let alone the probability of the truth of the facts involved is not known, a decison cannot be reasoned or based on substantial evidence. The implications

> of such a decision are frightening. It means that any student with a personal dislike to a teacher could bring his career to an end by a complaint wholly unjustified and unsubstantiated in fact. In the same sense, a malicious group in the community could start unsubstantiated rumors resulting in dismissal. Further, an administrator or another teacher bent on a personal vendetta could, by insidiously starting false rumors, bring about the dismissal of a totally innocent teacher."

With the lower Court's reasoning in the case *sub judice*, all of the horrors outlined by the Courts in *Chase* and *Roth, supra.*, have come to visit the Fourteenth Amendment Constitutional safeguards which should be due Petitioner.

This Court in *Board of Regents v. Roth, supra.*, also recognizes that there were other factors to consider other than state statutes, local ordinances or express or implied contracts in determining whether or not one has a protected propert interest in continued employment when it was indicated that the right of a due process hearing for non-renewal of contract would apply if the non-renewal of contract was based on a charge "that might seriously damage his standing and associations in his community," or a charge that placed upon him "a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities."

Here, it is so clear as to warrant this Court taking judicial notice that the allegations contained in the December 11, 1979 letter and the collateral "Individual Plan of Improvement" would in and of themselves place a stigma on Petitioner as to her competency as a teacher and cause serious and irreparable damage to ner standing within the community.

Although the Court in *Board of Regents v. Roth, supra.* cited instances such as charges of dishonesty or immorality as being areas that might implicate interest in "liberty" so as to require a constitutional due process hearing, it can safely be argued that charges of incompetence and insubordination would also implicate interest in liberty and thereby trigger due process requirements. Here, charges of both incompetence and insubordination were lodged against Petitioner by the Respondents. *Birnbaum v. Trussell*, 371 F. 2d 672 and *Meredith v. Allen County War Memorial Hospital Comm'n*, 397 F. 2d 33.

The lower Court endorsed the finding of the trial Court that "nothing in Mississippi law, plaintiff's contract, or the policies, rules, guidelines or practices of defendants" created an expectancy of continued employment beyond the yearly contract period, and that absent such a showing no property interest could be claimed in the prospect of continued employment.

It is clear from the record that had Petitioner complied with the Respondents' "Individual Plan of Improvement" she would have been employed by Respondents for the 1980-81 school year. As such, Petitioner's only bar to continued employment was the terms and conditions of Respondents' "Individual Plan of Improvement." Thus if we start from the premise that the "Individual Plan of Improvement" itself was unconstitutionally implemented, then it must also be resolved that Petitioner had property interest which entitled her to constitutional due process protection prior to Respondents' decision to place her on probation and require her to submit to the requirements of the "Individual Plan of Improvement." *Perry v. Sindermann*, 408 U.S. 593 (1972)

The basic principal of the Due Process Clause of the Fourteenth Amendment is that no person shall be deprived of life, liberty or property without an opportunity to be heard, *Armstrong v. Mango*, 380 U.S. 545, (1965); *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, (1949). The guarantee that a party whose rights were affected must be given the opportunity to defend himself is based upon the most elementary concept of justice.

The key to an effective hearing is the opportunity of each party to know and meet the evidence and argument against him. Such a hearing represents the sole method of protecting against possible arbitrary, invidious or discriminatory action which would prejudice an individual's substantive right.

The following have traditionally been held essential prerequisites to meeting the requirements of minimum procedural due process:

> (1) the right to be advised of the cause or causes for denial of a right or privilege in sufficient detail to fairly enable one to show error that may exist.
>
> (2) the right to be advised of the names and the nature of the testimony of witnesses against him.
>
> (3) the right to be allowed a reasonable time after such advice to be heard in one's own defense. *Dixon v. Alabama State Board of Education*, 294 F. 2d 150 (5th Cir.) Cert. denied, 396 U.S. 930 (1961)

signals the end of these three minimum due process protections for teachers unprotected by state statutes, local ordinance or express contract, and who have suffered arbitrary and capricious termination or disciplinary action for alleged conduct which places a stigma or other disability on them.

Petitioner, as the only Black sociology instructor employed by Respondents was unconstitutionally singled out as a teacher who required special supervision because of the unverified complaints from students whose sensitivities were ruffled when confronted with subject matter that challenged their traditional community values. This categorization of Petitioner by Respondents imposed upon her a restraint and stigma greater than those imposed on other teachers in her department. Such action by Respondents violated Petitioner's rights secured by the equal protection clause of the Fourteenth Amendment of the United States Constitution. *Trister v. University of Mississippi*, 420 F. 2d 499 (1969).

Under the well established laws and statutes of the State of Mississippi, the school authorities have broad discretion in determining whether to renew the contract of an instructor. Discretion has been interpreted by the Courts to mean judgment,

not bias or capriciousness. *Johnson v. Branch*, 364 F. 2d 177, cert. denied, 385 U.S. 1003 (1967). *Johnson, supra.* at 181, further held that such exercise of discretion "must be based on fact and supported by reasoned analysis."

Thus, it follows under the Fourteenth Amendment, that Respondents could not refuse to reemploy Petitioner for reasons not supported by substantial evidence. Here, Respondents acted not only without substantial evidence, but without any evidence at all that Petitioner had actually committed the acts complained of by the students in the December 11, 1979 letter.

(2) The lower Court found that the Respondents' "Individual Plan of Improvement" did not violate Petitioner's rights secured by the First Amendment to the United States Constitution.

The "Individual Plan of Improvement" by the Respondents' own admission was difficult to define. The Plan on its face was ambiguous and incapable of placing Petitioner on notice of the specific conduct which was proscribed.

This Court in *Keyishian v. Board of Regents*, 385 U.S. 589 (1967) held that:

> "When must guess what conduct or utterance may lose him his position, one necessarily will 'steer far wider of the unlawful zone'. . . The danger of that chilling effect upon the exercie of vital First Amendment rights must be guarded against by sensitive tools which clearly inform teachers what is being proscribed."

Likewise, Petitioner was faced with the possible chilling effects of the "Individual Plan of Improvement" or with prospect of losing her job for her failure to abide by its vague and general terms that left much to conjecture and specualtion.

In the District Court case of *Mailloux v. Kiley*, 323 F. Supp. 1387, the Court stated that a teacher in his capacity is engaged in the exercise of "vital First Amendment rights," and should not be forced to guess what speech may cost him his job.

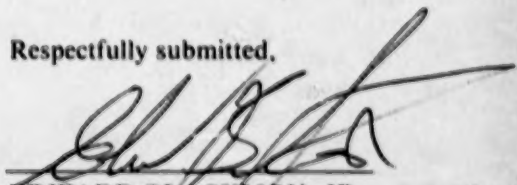
The logic of *Kiley, supra* has application here. The over vagueness of the Plan warranted Petitioner's refusal to surrender her First Amendment rights. Such a refusal by Petitioner should not have been found to be legitimate grounds for the non-renewal of her contract.

This Court should be cautious not to permit the dilution of protection afforded by the First Amendment. There is more than just an apparent danger here of erosion if the lower Court's decision is left standing.

CONCLUSION

This Court should grant the petition for certiorari and hear the issues raised in this important area of the First and Fourteenth Amendments.

Respectfully submitted,

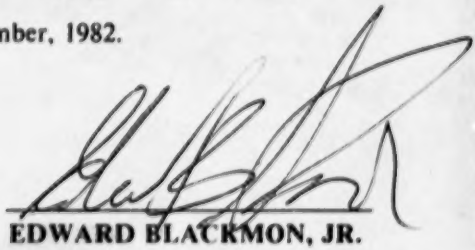


EDWARD BLACKMON, JR.
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Edward Blackmon, Jr., attorney of record for the Petitioner in the above entitled action, hereby certify that I have this day mailed, postage prepaid, by United States Mail, three (3) true and correct copies of the foregoing Petition for Writ of Certiorari to the Honorable Ben J. Piazza, Donald C. Woods, KEYS, MOSS & PIAZZA, 213 South Lamar Street, Post Office Box 22845, Jackson, Mississippi 39205, attorneys for Respondents.

This the 28th day of December, 1982.



EDWARD BLACKMON, JR.